

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

ALEC

MEMORANDUM

To: Civil Justice Task Force Members
From: Amy Kjose, Civil Justice Task Force Director
Date: April 6, 2012
Re: 35 DAY MAILING – Spring Task Force Summit: Civil Justice Task Force

The American Legislative Exchange Council will host its Spring Task Force Summit on **May 11** at the **Westin Charlotte** in **Charlotte, NC**. If you have not registered for the conference, you may do so [here](#).

About This 35-Day Mailing

This is an electronic-only 35-Day Mailing. In addition to receiving the 35-Day Mailing via e-mail, you may also access it on the Civil Justice Task Force's web page at <http://www.alec.org>. Keep in mind that you will need your ALEC username and password to access the 35-Day Mailing online. If you don't have an ALEC log-in, or if you'd like to change your username and password, contact Bryan Weynand at 202.379.4380 or by email at bweynand@alec.org. Conversely, if you choose to receive 35-Day Mailings "snail-mailed" to you, please let me know. We will assume that you prefer the 35-Day Mailing e-mailed to you unless you indicate otherwise.

Meetings Civil Justice Task Force Members Should Attend:

- Civil Justice Task Force Lunch Meeting, **1:00pm-2:00pm, Friday, May 11**
- Civil Justice Task Force Meeting, **2:00pm-5:15pm, Friday, May 11**

Please find the following materials enclosed:

- STFS Tentative Agenda, Registration Materials, and Reimbursement Policy
- Working Agenda for the Civil Justice Task Force Meeting
- ALEC Mission Statement & Task Force Operating Procedures
- Model Legislation: *Attorney General Authority Act* and attached explanation memo
- Model Resolution: *Resolution in Support of Strengthening the Medicare Secondary Payer System*
- Minutes from the Civil Justice Task Force Meeting at SNPS in Scottsdale

Travel and Accommodations: The conference hotel for STFS is the **Westin Charlotte** located at 601 South College Street, Charlotte, NC.

For State Legislators: For Task Force members ALEC will cover two nights in the host hotel directly and reimburse travel expenses up to \$350. See the attached reimbursement policy for procedures.

I look forward to seeing you in Charlotte. If you have any questions or comments regarding the meeting, please contact me at (202) 742-8510 or by e-mail at akjose@alec.org

2012 ALEC SPRING TASK FORCE SUMMIT

May 11, 2012

The Westin Charlotte Hotel
601 South College Street • Charlotte, NC 28202

ATTENDEE REGISTRATION / HOUSING FORM

Early registration deadline: April 5, 2012

Housing cut-off date: April 5, 2012



charlotte, north carolina
may 11, 2012

spring task force summit

Online
www.alec.org

Fax (credit cards only)
202.331.1344

Phone / Questions
Registration 202.742.8538 (Mon-Fri, 9am-5:00 pm Eastern)
Housing 1.866.837.4148

ATTENDEE INFORMATION

Prefix (required) ☐ Sen ☐ Rep ☐ Del ☐ Mr ☐ Mrs ☐ Ms ☐ Other _____
Last Name _____ First Name _____ Middle Initial _____ Badge Nickname _____
Title _____
Organization (required) _____
Primary Address ☐ Business ☐ Home _____
City _____ State/Province _____ Country _____ ZIP/Postal code _____
Daytime phone _____ Fax _____ Alternate phone _____
Email (confirmation will be sent by email) _____
Emergency Contact Name _____ Day Phone _____ Evening Phone _____
Dietary Restrictions _____
☐ This is my first time attending an ALEC event. *Spouse / Guest: If registering a spouse or guest, please complete the spouse/guest registration form

REGISTRATION INFORMATION

Registration Fees

Note: Member fees are subject to verification

	Early Until April 5	Onsite Beginning April 6
<input type="checkbox"/> ALEC Legislative Task Force Member	\$ 150	\$ 150
<input type="checkbox"/> ALEC Private Sector Task Force Voting Member	\$ 250	\$ 250
<input type="checkbox"/> ALEC Non-Profit Task Force Voting Member	\$ 250	\$ 250
<input type="checkbox"/> ALEC Legislative Member/ Non-Task Force Member	\$ 300	\$ 400
<input type="checkbox"/> Private Sector Member/ Non-Task Force Member	\$ 550	\$ 650
<input type="checkbox"/> ALEC Non-Profit Member (501(c)(3) status required)/ Non-Task Force Member	\$ 475	\$ 575
<input type="checkbox"/> Legislative/ Non-Member	\$ 400	\$ 500
<input type="checkbox"/> Private Sector/ Non-Member	\$ 675	\$ 825
<input type="checkbox"/> Non-Profit Non-Member (501(c)(3) status required)	\$ 625	\$ 725
<input type="checkbox"/> Legislative Staff/ Government	\$ 400	\$ 500
<input type="checkbox"/> ALEC Alumni	\$ 350	\$ 450
<input type="checkbox"/> ALEC Legacy Member	\$ 0	\$ 0

REGISTRATION FEE : \$ _____

Note: Registration forms with enclosed payments must be received by April 5, 2012 to be eligible for early bird registration rates. Forms and/or payments received after April 5, 2012 will be subject to on-site registration rates.

METHOD OF REGISTRATION PAYMENT

Credit Card: Credit cards will be charged immediately.

☐ Amer Express ☐ Visa ☐ MasterCard

Card # _____

Cardholder (please print) _____

Exp Date (mm/yy) ____/____ Signature _____

REGISTRATION CANCELLATION / REFUND INFORMATION

Registrations cancelled prior to 5:00 pm Eastern April 5, 2012 are subject to a \$100 cancellation fee. Registrations are non-refundable after 5:00 pm Eastern April 5, 2012. Registration fees may be transferred from one registrant to another. All refund requests must be made in writing and sent via email to meetings@alec.org or fax to 202-331-1344.

REGISTRATION CONFIRMATION INFORMATION Online registrants will receive immediate email confirmation. If registering by form, confirmation will be emailed within 72 hours of receipt of payment.

HOUSING

RESERVATION CUTOFF FOR ALEC DISCOUNTED RATE IS April 5, 2012

☐ I do not require a reservation at this time.

Arrival Date _____ Departure Date _____

☐ Sharing room with _____

Room type

- ☐ Single (1 Adult) \$ 139
☐ Double (2 Adults) \$ 139
☐ Triple (3 Adults) \$ 139
☐ Quad (4 Adults) \$ 139

Suites and upgraded accommodations are available upon request. Please call 1.866.837.4148 for additional information.

Special requests

- ☐ ADA room required:
____ Audio ____ Visual ____ Mobile
☐ Rollaway / crib: _____
☐ Other: _____

METHOD OF HOUSING PAYMENT

☐ Please use the same method of payment as above.

Credit Card: Credit Cards will be used to guarantee the reservation.

☐ Amer Express ☐ Visa ☐ MasterCard ☐ Discover

Card # _____

Cardholder (please print) _____

Exp Date (mm/yy) ____/____ Signature _____

* All rates DO NOT include sales tax 15.25% (subject to change)

Note: Cutoff for reservations at the ALEC rate is April 5, 2012. After April 5, 2012, every effort will be made to accommodate new reservations, based on availability and rate.

HOUSING CONFIRMATION INFORMATION

Online reservations will receive immediate email confirmation. Reservations received by form will be confirmed via email within 72 hours of receipt.

HOUSING CANCELLATION / REFUND INFORMATION

Credit cards will be charged one night room and tax in the event of a no show or if cancellation occurs within 72 hours prior to arrival. Please obtain a cancellation number when your reservation is cancelled.

2012 ALEC SPRING TASK FORCE SUMMIT

May 11, 2012

The Westin Charlotte Hotel
601 South College Street • Charlotte, NC 28202

SPOUSE/GUEST REGISTRATION FORM



charlotte, north carolina
may 11, 2012

spring task force summit

Online
www.alec.org

Fax (credit cards only)
202.331.1344

Phone / Questions • Mon-Fri, 9am-5:30 pm Eastern
Registration: 202.742.8538

ATTENDEE INFORMATION IS REQUIRED TO REGISTER A SPOUSE OR GUEST

Last Name _____ First Name _____
Organization _____
Daytime phone _____
Email (*Confirmation will be sent by email*) _____

SPOUSE / GUEST REGISTRATION

SPOUSE / GUEST REGISTRATION GUIDELINES

1. Spouse / guest registration is meant to accommodate legal spouse and immediate family members.
2. Attendees from the same organization must register independently. No exception will be made.
3. Spouse / guest designation will be clearly visible on name badge.

Last Name _____ First Name _____ Middle initial _____ Badge Nickname _____
Last Name _____ First Name _____ Middle initial _____ Badge Nickname _____
Last Name _____ First Name _____ Middle initial _____ Badge Nickname _____

SPOUSE / GUEST REGISTRATION FEES	Number of Spouse/Guest(s)	Fee	TOTAL
<input type="checkbox"/> Spouse / Guest <i>please note name(s) above</i>	_____	\$ 50	\$ _____

METHOD OF SPOUSE / GUEST REGISTRATION PAYMENT

Credit Card: Credit cards will be charged immediately. Please fax to the above number for processing.

☐ Amer Express Card # _____
☐ Visa Cardholder (*please print*) _____
☐ MasterCard Exp Date (*mm/yy*) ____/____ Signature _____

REGISTRATION CONFIRMATION INFORMATION

Online registrants will receive immediate email confirmation. If registering by form, confirmation will be emailed within 72 hours of receipt of payment.

REGISTRATION CANCELLATION / REFUND INFORMATION

Registrations are non-refundable after 5pm Eastern April 5, 2012.

Agenda

Thursday, May 10, 2012

Registration

3:00 p.m. – 7:00 p.m.

NC Welcome Reception

8:30 p.m. – 11:00 p.m.

Friday, May 11, 2012

Registration

7:30 a.m. – 2:00 p.m.

Task Force Subcommittee Meetings

8:00 a.m. – 9:45 a.m.

All Task Force members are welcome and encouraged to attend their Task Force's Subcommittee meetings.

Digital Learning Subcommittee

8:15 a.m. – 9:15 a.m.

Energy Subcommittee

8:15 a.m. – 9:15 a.m.

Fiscal Policy Reform Working Group

8:15 a.m. – 9:15 a.m.

Other Subcommittees to be Determined

Workshop:

9:30 – 10:45

All ALEC members are welcome to attend.

Workshop:

11:00 a.m. – 12:15 p.m.

All ALEC members are welcome to attend.

Task Force Lunch Meetings

1:00 p.m. – 2:00 p.m.

Task Forces will each begin serving at 12:45 for luncheon.

Task Force Meetings

2:00 p.m. – 5:15 p.m.

- Civil Justice
- Commerce, Insurance, and Economic Development
- Communications and Technology
- Education
- Energy, Environment and Agriculture
- Health and Human Services
- Public Safety and Elections
- Tax and Fiscal Policy

Spring Task Force Summit Reception

6:30 p.m. – 8:30 p.m.



Civil Justice Task Force Meeting

Spring Task Force Summit | The Westin Charlotte | Charlotte, North Carolina
May 11, 2012 | 1:00 p.m.-5:00 p.m.

1:00p.m. **Lunch Served**
1:15p.m. **Lunch Speaker**

Task Force Meeting

2:00 p.m. **Welcome and Introductions**
Senator William J. Seitz, III (OH), Civil Justice Task Force Co-Chair
Victor Schwartz, Partner, Shook, Hardy & Bacon; Civil Justice Task Force Co-Chair

2:15 p.m. **Task Force Update**
Amy Kjose, Civil Justice Task Force Director, ALEC

2:20 p.m. **Civil Justice State Legislative Reform Update**
Matt Fullenbaum, Director of Legislation, American Tort Reform Association (ATRA)

2:30 p.m. **PRESENTATION & DISCUSSION: Insights into Loser Pays Reforms: Practical Considerations and Misperceptions**
Cary Silverman, Shook, Hardy & Bacon; Civil Justice Task Force Advisor

2:50 p.m. **DISCUSSION: The Attorney General Authority Act**
Charlie Ross, Wise Carter Child and Caraway, PA

3:10 p.m. **PRESENTATION: Supporting Small Businesses through Legal Reform**
Speaker to Be Announced

3:30 p.m. **PRESENTATION: Regulation through Litigation of Greenhouse Gases is Unsound Public Policy**
Mary Frontczak, Peabody Energy

3:50 p.m. **DISCUSSION & VOTE: Resolution in Support of Strengthening the Medicare Secondary Payer System**
Eric Goldberg, American Insurance Association
Charlie Ross, Wise Carter Child and Caraway, PA; Civil Justice Task Force Advisor

4:10 p.m. **PRESENTATION: A Careful Balance of Justice and Fairness: Securities Litigation Considerations for State Legislators**
Jim Copland, Manhattan Institute

4:30 p.m. **ROUNDTABLE DISCUSSION: Legislative Ideas and Prospects for 2012**
Moderated by Senator William J. Seitz, III (OH), Civil Justice Task Force Co-Chair

4:55 p.m. **For the Good of the Order**

5:00 p.m. **Adjournment**



The Attorney General Authority Act

Section 1. {Title}. This Act may be known as the Attorney General Authority Act.

Section 2. {Purpose}. The purpose of this section is to provide that when the Legislature grants specific enforcement authority to the Attorney General, or sets forth an administrative process for private citizens to exhaust before, or in place of, court action, the Attorney General must act in accordance with that specific enforcement authority or, where applicable, follow that administrative process.

Section 3. {Scope of Attorney General Authority}. Whenever a specific act of the Legislature sets out the Attorney General's authority with regard to that act, the Attorney General's power with regard to that act shall only be that authority provided in that act, notwithstanding any other provision of law.

Section 4. {Attorney General to Follow Administrative Procedures}. Whenever the Attorney General is bringing a civil action on behalf of the citizens of the state pursuant to law, with regard to any method, act or practice of an entity that is regulated by a state agency or a federal agency, and the citizens of this state, would have to, by law, exhaust administrative remedies before such agency with regard to such method, act or practice if a citizen were bringing the action on his or her own behalf, then the Attorney General shall also have to exhaust administrative remedies before such state or federal agency and then seek judicial review in a court of law rather than bringing a direct action in court.

Section 5. {Rule of Construction}. The provisions of this Act do not expand any authority the Attorney General may have under law.

Explanation of ALEC Attorney General Authority Act

The Attorney General of a state is generally considered the chief legal officer of the state both in the civil and criminal context. Nevertheless, as with private attorneys, the Attorney General is still an attorney, and should follow the wishes of his or her client, the state, especially in the civil context where the Attorney General may have greater enforcement discretion. Just as a private attorney cannot bring a suit on behalf of a client without the client agreeing and authorizing such action, and then only within the guidelines allowed by the client, so it should be with the Attorney General. Rather than an Attorney General deciding on his or her own what authority the office may have to bring a lawsuit, the authority should be defined by the state as reflected by the specific decisions of the legislature via statute. The legislature, not the Attorney General, is best positioned to balance the competing concerns that go into the decision of whether to allow a cause of action and under what circumstances. The Attorney General Authority Act is designed to ensure enforcement of that legislatively granted power.

The Act provides that when the legislature decides that the Attorney General has a specific type of authority with regard to a particular enactment, it is the Attorney General's only authority. For example, if a state antitrust statute states on whose behalf the Attorney General can sue, the type of penalties that can be obtained, and the venue where the Attorney General can bring the suit, the Attorney General should not be able to avoid these parameters by relying upon common law authority, or some other general authority provided in statutory law. Rather, the Attorney General must rely on the authority given by that express statutory enactment.

The Act further provides that an Attorney General's authority cannot be applied in a manner in which he or she obtains greater ability to sue than an allegedly injured individual. Specifically, the Act states that the Attorney General must first seek relief before an administrative agency when suing on behalf of private citizens if the private citizen would have to first go to the administrative agency when bringing the action. For example, just as a citizen would usually have to go before the state Public Service Commission to challenge the reasonableness of a utility rate, so should the Attorney General when the Attorney General is suing on behalf of the citizens of the state to challenge the reasonableness of utility rates. The same principle would apply to the reasonableness of insurance contracts that have been approved by insurance regulators, and the reasonableness of banking procedures that are used pursuant to regulations issued by Banking Commissioners. In short, if a private citizen is required to exhaust administrative remedies because the legislature has determined that an administrative agency is better suited than a court to address a topic (at least in the first instance), then the Attorney General must do the same when suing on behalf of the citizens of the state.

In addition to these substantive provisions, the Act includes a general rule of construction designed to avoid confusion. The Act expressly states that it does not expand any authority that the Attorney General may have under the law.



Resolution in Support of Strengthening the Medicare Secondary Payer System

Summary

This resolution supports efforts to amend the federal Medicare secondary payer law (42 U.S.C. § 1395y(b)) by establishing clear procedures for parties to follow when reimbursing Medicare for payments made on behalf of its beneficiaries. Medicare conditionally pays medical expenses to ensure that beneficiaries receive proper care, and when this occurs Medicare is permitted to recoup such payments to the extent the payments are included in a personal injury claim against an alleged defendant, and that claim is resolved by a judgment or settlement. This reimbursement, however, is often delayed where the Medicare beneficiary is involved in litigation over his or her personal injury because the parties are uncertain as to the correct amount owed to Medicare, and Medicare does not provide the amount it expects to recover until after a judgment or settlement has been reached in the litigation. The result is uncertainty for all parties and an information bottleneck that impedes fair and efficient settlement of the claim. Further, there is currently no method by which a defendant can tender the correct amount owed to the Medicare beneficiary (or his or her attorney) without still being liable for the reimbursement amount in the event the beneficiary or attorney does not make the required reimbursement. This resolution urges Congress and the President of the United States to enact legislation to remove the costly bottleneck in the current system and provide certainty in how Medicare is repaid.

Resolution

PURPOSE: Urging Congress and the President of the United States to improve the federal Medicare secondary payer law (42 U.S.C. § 1395y(b)) by establishing clear rules and procedures for the beneficiaries or others to follow when reimbursing Medicare for payments made on behalf of Medicare's beneficiaries.

WHEREAS, the federal Medicare secondary payer law is an important law designed to protect the Medicare Trust Fund and ensure that Medicare pays only for medical expenses for which it is responsible; and

WHEREAS, Medicare beneficiaries periodically make claims seeking compensation for personal injuries that are covered by insurance plans or self-insured defendants, and these payers, under current law, are jointly liable with the Medicare beneficiary to repay Medicare in the event of a settlement of the claim or a judgment in favor of the claimant; and

WHEREAS, the manner in which Medicare secondary payer law is currently being administered with respect to claims involving individuals who are eligible for the Medicare Program has caused unnecessary delay and unfairness in the settlement of claims, and substantial additional transaction costs, which are often incurred by defendants or insurance companies, even though they are not Medicare beneficiaries and receive no benefit from Medicare payments to a claimant; and

WHEREAS, the delays in the settlement of claims and the uncertainty of the scope of the Medicare Program as the secondary payer has increased settlement costs for all parties involved in litigation regarding a Medicare beneficiary's personal injury; and

WHEREAS, the delay and uncertainty caused by the Medicare secondary payer law has increased costs to states and local jurisdictions; and

WHEREAS, the complexity of the current Medicare repayment system has prevented beneficiaries from being able to resolve their claims without assistance; and

WHEREAS, the Centers for Medicare & Medicaid Services (CMS) could greatly reduce the delays, uncertainty, costs, and complexity in the present system by providing more timely confirmation of conditional payments in which repayment is sought; and

WHEREAS, procedures that promote parties' timely notice of claims information to Medicare and focus collection efforts on the Medicare beneficiary could streamline the reimbursement process; and

WHEREAS, clear rules regarding the scope of parties' potential liability and responsibilities for compliance with the Medicare secondary payer law could provide certainty and consistency in how Medicare is repaid.

THEREFORE, BE IT RESOLVED, that the American Legislative Exchange Council supports amendment of the federal Medicare secondary payer law or the CMS' procedures that would:

1. Provide timely information on the existence of conditional payments, and the amount of such payments, to all parties involved; and
2. Provide simple, web-based, automated, self-service options to Medicare beneficiaries who receive a settlement, judgment, or payment to permit the beneficiary to calculate and repay the final conditional payment amount and to resolve compromised claims for future benefits; and
3. Provide a method by which a defendant can tender the correct amount owed to the Medicare beneficiary (or his or her attorney) without still being liable for the reimbursement amount in the event the beneficiary or attorney does not make the required reimbursement; and

4. Provide certainty in the parties' obligations by making the Medicare beneficiary primarily responsible for repayment of conditional payments and relieving insurers and other parties of such liability where timely reporting of claims information to the CMS occurs; and
5. Provide certainty for who is obligated to reimburse Medicare such that only persons who are entitled to Medicare at the time the claim is settled are responsible for reimbursement.

BE IT FURTHER RESOLVED, that the American Legislative Exchange Council encourages state courts and legislatures that have modeled laws and regulations based upon the federal Medicare secondary law to take similar action.



**Civil Justice Task Force Meeting
ALEC's 2011 States & the Nation Policy Summit
Scottsdale, Arizona
December 1, 2011
Meeting Minutes**

Task Force Co-Chairs Sen. William Seitz of Ohio and Victor Schwartz of Shook, Hardy & Bacon called the meeting to order.

Amy Kjose gave the task force update.

Matt Fullenbaum gave the state legislative reform update.

Walter Olson of Cato spoke on his new book, *Schools for Misrule: Legal Academia and an Overlawyered America*.

Victor Schwartz presented greenhouse gas public nuisance litigation and whether courts or the legislature should be responsible for greenhouse gas regulation.

Dan Greenberg presented on the work of the Center for Class Action Fairness to prevent settlement abuse.

The Task Force adopted unanimously amendments to the *Product Liability Act* presented by Cary Silverman of Shook, Hardy & Bacon.

Antonio Dias of Jones Day spoke on emerging issues in qui tam lawsuits in the education sector.

Oriana Senatore presented on a new study commissioned by the US Chamber Institute for Legal Reform measuring the effects of legal reform on economic performance.

Eric Goldberg of the American Insurance Association and Charles Ross of Wise, Carter, Child & Caraway LLP spoke on keeping government from preventing reasonable settlements.

Sen. Seitz moderated a discussion on legislative victories in 2011 and prospects for 2012.

Meeting adjourned.